



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on November 26, 2017, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 4, 2017, indicating a monthly rent of \$1,508.12, due on the first day of each month for a tenancy commencing on December 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 6, 2018 for \$1,699.36 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 16, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the landlord sent the tenant the 10 Day Notice to End Tenancy by registered mail to the rental unit at 11:00am on November 6, 2018.
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.
- A Tenant Ledger showing the rent owing and paid during the term of the tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 11, 2018, five days after its registered mailing.

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies

that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The landlord has provided a rental ledger which lists a running tally from November 7, 2017 to November 2, 2018. The ledger includes fees that cannot be recovered by way of the Direct Request Process. I find that there is a discrepancy between the amount listed on the 10 Day Notice to End Tenancy, the landlord's accompanying rental ledger, and the Direct Request Worksheet. The landlord's application for an Order of Possession and a Monetary Order is based on the 10 Day Notice dated November 06, 2018, which notifies the tenant to provide payment of the amount of unpaid rent due by November 01, 2018.

Since the landlord has provided conflicting documentary information, some of which includes fees that cannot be sought by way of the Direct Request process, with respect to the amount owed specifically for unpaid rent as November 01, 2018, to determine the amount of rent owed each month, and to determine the amount of unpaid rent owed by November 01, 2018, I will rely upon the information provided in the tenancy agreement, which indicates that the monthly rent owed is \$1,508.12.

For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from May 2018 to October 2018, with leave to reapply, and will consider only the amount of rent owed by November 01, 2018, as indicated on the 10 Day Notice.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,508.12, as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 21, 2018.

I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,508.12, which is the amount of rent owed to the landlord by November 1 2018, as of November 20, 2018.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,608.12 for rent owed for November 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's monetary claim for unpaid rent owing from May 2018 to October 2018 with leave to reapply.

I dismiss the landlord's monetary claim to recover fees that cannot be awarded by way of Direct Request Process, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 29, 2018

Residential Tenancy Branch